

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
Annual Assessment of the Status of)	
Competition in Markets for the)	
Delivery of Video Programming)	
)	CS Docket No. 01-129

COMMENTS OF ECHOSTAR SATELLITE CORPORATION

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SUMMARY

Effective competition for most consumers of multichannel video programming services has yet to be achieved. Even though the increases in Direct Broadcast Satellite (“DBS”) subscribers have confirmed that DBS services are perhaps the only truly viable alternative to cable at this time, cable remains the dominant technology for delivery of multichannel video programming to consumers.¹ The Commission reported last June that cable had 80 percent of the distribution market.² Although cable’s market share decreased slightly since then, cable operators continue to maintain a vice-like grip particularly in urban areas and in the market for original video programming. Cable operators are also positioning themselves to leverage their incumbency into the rapidly-emerging area of high-speed Internet access. The most compelling proof of cable market power is provided by cable prices – still rising and still outpacing inflation.

Why does cable operators’ market power persist? A large part of the answer has to do with the preferential access to popular programming that cable operators still enjoy. Indeed, this annual review proceeding provides the Commission with an opportunity for a long overdue look at the program access problems that continue to bedevil the multichannel video marketplace.

¹ See *In the Matter of Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming*, Seventh Annual Report, CS Docket No. 00-132 (rel. Jan. 8, 2001), at ¶ 5 (“2000 Report”).

² *In the Matter of Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming*, CS Docket No. 01-129 (rel. June 25, 2001), at ¶ 15 (“Notice” or “NOI”).

Congress recognized some of these problems in 1992. To tackle them, it decided to prohibit unfair practices on the part of cable operators and their affiliated programmers, and instructed the Commission to prohibit discriminatory and exclusive deals with affiliated programmers. *See* 47 U.S.C. § 548. The Commission has implemented those prohibitions. Regrettably, however, the Commission has not enforced these rules with vigilance. The Commission has not granted a single program access complaint for years – since the early part of 1998.³

This lack of vigilant enforcement is not because the anti-competitive practices in the program access area have somehow abated. The same problems identified by Congress in 1992 persist in 2001. Indeed, EchoStar believes that many cable-affiliated programmers have been emboldened by the Commission's repeated refusal to reach the merits or decide the facts of program access disputes. As a result, despite the significant increase in EchoStar's subscriber base, EchoStar believes that there are still huge discrepancies in the terms and conditions under which vertically integrated programmers make programming available to EchoStar and to cable operators – discrepancies not due to any legitimate competitive factors such as cost savings or volume discounts.

The Commission is far from powerless to combat these problems. In fact, showing resolve in this area has now become especially imperative, in light of the Commission's

³ Congress has also acted in the equally important area of retransmission consent – access to broadcast programming. In instructing the Commission to prohibit bad faith negotiations by broadcasters, it has clearly intimated that disparities in the terms available to different distributors can demonstrate bad faith if not based on competitive marketplace considerations. *See* 47 U.S.C. § 325(b). The Commission should confirm its willingness to enforce these restrictions vigorously as well.

policies favoring the nurturing of competition over the regulating of monopolists. Curbing unequal access to programming is essential to creating such an environment of effective competition and preempting any need for return to cable rate regulation.

To show that resolve, the Commission should do three things:

- *enforce the rules now on the books with more vigor.* The Commission should step up its enforcement of the program access rules. Among other things, the Commission must finally allow fact discovery when a program access or retransmission dispute turns on the facts. The Philadelphia sports programming proceedings are a good example of the need for discovery of all relevant facts. Comcast has gotten away with refusing to sell its Philadelphia sports programming to EchoStar and DIRECTV based on its use of terrestrial transmission to deliver this programming to its headends. While the Commission has recognized that conduct such as Comcast's could be an unlawful evasion of the rules depending on the facts, it has not allowed discovery of these facts, to the detriment of Philadelphia consumers, who can get their sports programming basically from only one source;
- *promptly institute a proceeding to evaluate the current prohibition on exclusive deals between cable operators and cable affiliated programmers; and*
- *begin to evaluate transactions in the multichannel video programming distributor ("MVPD") area through the prism of program access – i.e., examine whether such transactions increase further the already incestuous web of relationships between distributors and programmers.*

Finally, the Commission should be mindful of the practical implications of its actions on the ability of DBS operators to compete against cable. For example, Commission's proposals to introduce a new service in the DBS frequencies could result in decreased DBS service reliability and customer satisfaction if adopted. To paraphrase the comments of then Commissioner Powell, the Commission's efforts to promote MVPD competition should be informed by the Hippocratic principle: "first, do no harm."⁴ It would be ironic if the

⁴ *In the Matter of Creation of Low Power Radio Service*, MM Docket No. 99-25 (Jan. 20, 2000) (Statement of Commissioner Michael Powell, Dissenting in Part).

Commission undermined the only proven alternative to cable in the name of promoting MVPD competition. Licensing a terrestrial point to multipoint service in the same spectrum used by DBS would be harmful to DBS without being necessary, since terrestrial services of this kind can be accommodated in other frequencies.

Effective competition for most consumers of multichannel video programming services has yet to be achieved. Even though the increases in DBS subscribers have confirmed that DBS services are perhaps the only truly viable alternative to cable at this time, cable remains the dominant technology for delivery of multichannel video programming to consumers.³ The Commission reported last June that cable had 80 percent of the distribution market.⁴ Although cable's market share decreased slightly in 2000, cable operators continue to maintain a vice-like grip particularly in urban areas and in the market for original video programming. Cable operators are also positioning themselves to leverage their incumbency into the rapidly-emerging area of high-speed Internet access. The most compelling proof of cable market power is provided by cable prices – still rising and still outpacing inflation.

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⁶ *In the Matter of Creation of Low Power Radio Service*, MM Docket No. 99-25 (Jan. 20, 2000) (Statement of Commissioner Michael Powell, Dissenting in Part).

I. CABLE OPERATORS CONTINUE TO WIELD MARKET POWER

Incumbent cable operators clearly continue to dominate the delivery of multichannel video programming to consumers. This market power is evident not only from the predominant share of subscribers served by cable operators, but also from the continuing cable rate increases and the relatively few determinations that the FCC has made to date finding effective competition in particular cable franchises. In short, cable operators still exert an unacceptably high degree of market power – which in turn enables them to dominate the programming market, in many instances extracting anti-competitive terms and conditions from programmers. Even more disconcerting, EchoStar believes that powerful programmers that are integrated with an MVPD can still extract considerably more onerous terms and conditions from unaffiliated distributors. It is thus imperative that the Commission continue to take steps to curb the market power of cable operators and to limit the anticompetitive effects of such market power.

The slight erosion in the market share of cable operators in the past year has not been significant enough to blunt cable operators' ability to raise cable rates and wield excessive influence over MVPD programmers – two clear indications of unrestrained market dominance. In short, as the Commission observed earlier this year:

The market for the delivery of video programming to households continues to be highly concentrated and characterized by substantial barriers to entry which serve to increase the cost of potential entry into a rival's market.

* * *

While competitive alternatives to the incumbent “wireline” MVPDs are developing and attracting an increasing

proportion of MVPD subscribers, most consumers have limited choices among video distributors.⁷

The statistics remain telling. Cable operators continue to command the preponderance of MVPD subscribers: the cable industry estimates that it will claim more than 77 percent of the MVPD market for the year 2001.⁸ And, as the Supreme Court has held, “[t]he existence of [monopoly] power ordinarily may be inferred from the predominant share of the market.”⁹ While the cable industry’s market share has slipped marginally, this decline is not nearly enough to demonstrate a loss of market power.¹⁰ This is particularly true in a market that is characterized by chronic price increases and extremely high barriers to entry.¹¹

The market is still characterized by chronic cable price increases. As the Commission correctly noted, the recent wave of “clustering” by MSOs that “purported to create greater economies of scale and scope and enable cable operators to offer a wider variety of services” has not resulted in the promised benefits to consumers.¹² Instead, the Commission

⁷ 2000 Report at ¶¶ 137-38 (citing *In the Matter of Annual Assessment of Competition in the Markets for the Delivery of Video Programming*, Third Annual Report, 12 FCC Rcd. 4358, 4419 ¶ 118 (1996) and *In the Matter of Annual Assessment of Competition in the Markets for the Delivery of Video Programming*, Fourth Annual Report, 13 FCC Rcd. 1034, 1121 ¶ 156 (1997)).

⁸ National Cable Television Association, “Cable & Telecommunications Industry Overview 2001,” at 11.

⁹ *United States v. Grinnell Corp.*, 384 U.S. 563 (1966) (citing *United States v. du Pont & Co.*, 351 U.S. 377, 391 (1956)).

¹⁰ See e.g., *Walter L. Reazin, M.D., et al. v. Blue Cross and Blue Shield of Kansas, Inc.*, 899 F.2d 951, 970 (10th Cir. 1990) (“A declining market share . . . does not foreclose a finding of [market] power.”) (quoting *Oahu Gas Serv. v. Pacific Resources, Inc.*, 838 F. 2d 360, 366-67 (1990)).

¹¹ See e.g., *Reazin*, 899 F.2d at 967-971; see also *Syufy Enterprises v. American Multicinema, Inc.*, 793 F.2d 990 (9th Cir. 1986) (holding that even a 60-69% market share, taken together with barriers to entry and other factors, supported a finding of market power).

¹² See Notice at ¶ 19.

observed that “[cable] operators that were part of a cluster had, on average, *higher* prices than operators that were not part of a cluster,” and only marginally increased availability of advanced services such as cable telephony and Internet access compared to the cable industry as a whole.¹³ Although cable interests disagreed with the analytical method the Commission employed to make this determination, the Commission’s conclusion remained the same even after it repeated the analysis using the method suggested by cable interests: “[w]hile clustering may help reduce programming and other costs as claimed by [cable interests], our findings show that these lower costs are not being passed along to subscribers in the form of lower monthly rates.”¹⁴ And the Commission’s most recent analysis of cable rates found that cable price increases continue a years-long trend of outpacing inflation.¹⁵

The MVPD market also remains characterized by significant barriers to entry.

This is evident in the relatively few findings of “effective competition” that the Commission has

¹³ *See id.* (emphasis added) (noting that among cable operators that were part of a cluster, 7% offered cable telephony and 48 percent offered Internet access, whereas for all cable systems (clustered and non-clustered), 6.5% offered cable telephony and 46.6% offered Internet access to subscribers.)

¹⁴ 2000 Report at ¶ 155 (citing other “studies with similar findings”).

¹⁵ *See State of Competition in the Video Marketplace: Hearing on Cable and Video: Competitive Choices Before the Senate Committee on the Judiciary, Subcommittee on Antitrust, Business Rights and Competition*, 107th Congress (Apr. 4, 2001) (prepared testimony of the Cable Services Bureau, FCC) (citing the Commission’s 2000 Annual Report on Cable Industry Prices, 16 FCC Rcd. 4346 (2001)); *see also* “Senate Antitrust Panel Faults Cable on Rates, Program Access,” *Warren’s Cable Regulation Monitor* (Apr. 9, 2001) (noting that Sen. Mike DeWine (R-OH) “ask[ed] why cable prices were still climbing at 3 times general inflation rate...”); Kris Hudson, “Comcast Says Even If It Buys AT&T, the Savings Wouldn’t Trim Consumer Rates,” *The Denver Post*, July 15, 2001; Christian Bottorff, “Satellite TV Company Woos Cable Customers Soured By Rate Increase,” *The Tennessean*, Aug. 1, 2001 (reporting on EchoStar’s “I Like 9” rate plan, offering service to new subscribers for \$9 a month).

made for cable franchises throughout the country.¹⁶ The Commission reported that for the twelve month period ending June 30, 2000, it made determinations of effective competition from LECs affecting “more than 150” communities – out of a total of 33,000 cable community units nationwide.¹⁷ The intervening months have produced less than 30 more (involving LECs as well as other types of entrants).¹⁸ In other words, in the past two years, the Commission affirmatively found effective competition to exist in a negligible portion of the country. Moreover, the Commission expressed uncertainty about the future of competition from LECs and other non-DBS competitors.¹⁹ Such trends should greatly concern the Commission.

Cable dominance may be further exacerbated by the aggressive cross-subsidization of broadband capability and services by large MSOs. Last year, for example, AT&T implemented a plan to aggressively subsidize these services from its massive pool of long

¹⁶ The Commission has observed that a majority of the new entrants are affiliated with local exchange carriers (“LECs”), and noted further that “[t]his may be the result of the capital intensive nature of the cable television industry.” 2000 Report at ¶ 238.

¹⁷ 2000 Report at ¶ 238.

¹⁸ A LEXIS FCC database search for the period July 1, 2000 to August 2, 2001 reflected fewer than 30 determinations of effective competition. *See, e.g., In the Matter of Cablevision of Boston, Inc., Petition for Determination of Effective Competition*, Memorandum Opinion and Order, CSR 5048-E, Boston MA, CUID No. MA0182, DA 01-1731 (Cable Services Bureau rel. July 20, 2001).

¹⁹ 2000 Report at ¶ 238 (“... the future of ... competition [from LEC-related entrants] has become increasingly uncertain following SBC’s acquisition of Ameritech, the largest LEC overbuilder. Similarly, other large LEC affiliated overbuilders are also considering selling there [sic] overbuild cable systems.”); *see also* Notice at ¶ 30 (discussing declining wireless cable subscribership). One estimate predicts that the overall market share of non-DBS competitors will decline, rather than grow, during the 1999-2002 period (from 1.2% in 1999 to less than 1% in 2002). “Domestic Multichannel Video Subscriber Summary,” *Cable World*, July 17, 2000 (providing MVPD subscriber estimates derived from Paul Kagan Associates Inc., Ladenburg Thalman & Co. Inc. and NCTA).

distance revenues,²⁰ exploiting yet another unfair advantage that DBS operators like EchoStar find hard to match, even where EchoStar has invested in innovative satellite-based broadband infrastructure.²¹

In short, there is clearly still insufficient competition for MVPD subscribers. The Commission should continue to take steps to curb the market power of incumbent cable operators.

II. THE COMMISSION MUST STRIKE AT THE ROOTS OF CABLE'S MARKET POWER

One important reason why cable dominance persists has to do with access to the most popular programming, both cable and broadcast. Non-cable distributors still face significant difficulties in obtaining fair, non-discriminatory access to programming from programmers.²² This problem is not limited to cable-affiliated programmers: based on their overwhelming buying power in the programming market, cable operators command

²⁰ Mike Farrell, "AT&T Delights by Wrapping Up Excite," *MultiChannel News*, Sept. 4, 2000 ("AT&T has been scrambling to meet its year-end goal of 500,000 cable-telephony customers . . . and expected to start a special promotion in several large cities last Friday, offering up to five free months of local and long-distance telephone service.").

²¹ See note 2, *supra* (press release discussing EchoStar's investment in Starband, America's first nationwide provider of two-way, always-on, high-speed Internet access via satellite to residential customers).

²² See, e.g., 2000 Report at ¶ 90 (citing comments of BellSouth that program access difficulties present a barrier to market entry for MMDS operators); *id.* at ¶ 181 (citing comments of open video system operator RCN Corporation); *In the Matter of Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming*, Sixth Annual Report, CS Docket No. 99-230, 15 FCC Rcd. 978 (2000), at ¶ 50 ("1999 Report") (citing comments of CCC, a coalition of wireline and wireless overbuilders); *id.* at ¶ 91 (citing comments of Wireless Communications Association that program access difficulties present a barrier to MVPD market entry for MMDS operators).

discriminatory treatment at the expense of competing distributors from unaffiliated programmers as well.²³

Fortunately, Congress has acted to address some of these problems – access to affiliated cable programming and retransmission of network programming. To date, however, the Commission has not enforced these rules with vigor. The Commission has denied every single program access complaint it has adjudicated since the early part of 1998, as if the program access problems identified by Congress have ceased to exist. And, in the retransmission area, the Commission has given mixed signals about its willingness to follow the guidance of the Satellite Home Viewer Improvement Act of 1999 (“SHVIA”) and police disparities in the terms of retransmission agreements that are not due to “competitive marketplace considerations.”²⁴

One of the most telling examples of this relative lack of regulatory vigilance is the Commission’s continuing unwillingness to allow a full airing of the disputed facts in program access or retransmission proceedings. Most of these disputes turn on the facts of each case, and yet the Commission has so far refused or failed to grant discovery in any of the program access or retransmission proceedings brought by EchoStar. The failure to adduce all relevant facts has affected the outcome of the “terrestrial programming” proceedings: programmers such as those

²³ The Commission acknowledged this in its 1999 Report, observing that “because programmers have an incentive to minimize transaction costs by obtaining carriage on a single large MSO, thereby gaining access to the large number of subscribers which are needed for viability, larger MSOs have *significant* bargaining power. . . .” *Id.* at ¶ 177 (emphasis added). As a result, the Commission concluded that “[n]oncable MVPDs . . . continue to experience some difficulties in obtaining programming from both vertically integrated cable programmers and unaffiliated programmers who continue to make exclusive agreements with cable operators.” *Commission Adopts Sixth Annual Report on Competition in Video Markets*, News Release, CS Docket No. 99-230 (rel. Jan. 14, 2000).

²⁴ *See* 47 U.S.C. § 325.

affiliated with Comcast and Cablevision have refused to deal with some or all non-cable distributors on the ground that their programming is delivered terrestrially and therefore falls outside the prohibition on exclusivity, which applies only to “satellite cable programming.”²⁵ The Commission has laudably recognized that such conduct can still be prohibited by the “catch-all” unfair practices rule depending on the facts – if the programmer’s decision to use terrestrial transmission was primarily based on a desire to evade the prohibition on exclusivity.²⁶ At the same time, the Commission has not allowed the factual discovery that would be necessary to shed light on this factual issue.²⁷ The results? Comcast has gotten away with refusing to provide its Philadelphia sports programming to EchoStar and DIRECTV, to the detriment of Philadelphia subscribers who cannot get their sports programming from a DBS company. Moreover, the Commission’s decisions in cases such as *Comcast* and *Cablevision* have encouraged an increasing and disconcerting migration of cable programming to terrestrial transmission. So,

²⁵ See *In the Matter of DIRECTV, Inc. and EchoStar Communications Corp. v. Comcast Corp.*, Memorandum Opinion and Order, 15 FCC Rcd. 22802 (2000), *appeal docketed*, *EchoStar Communications Corp. v. FCC*, No. 01-1032 (D.C. Cir. Docketed Jan. 19, 2001); see also *RCN Telecom Services of New York, Inc. v. Cablevision Systems Corp.*, 14 FCC Rcd. 17093 (Cable Service Bureau 1999), *aff’d*, Memorandum Opinion and Order, File Nos. CSR. 5404-P and 5415-P, FCC 01-127 (rel. May 30, 2001).

²⁶ *In the Matter of DIRECTV, Inc. and EchoStar Communications Corp. v. Comcast Corp.*, 15 FCC Rcd. 22802, at ¶ 13 (“We acknowledge that there may be some circumstances where moving programming from satellite to terrestrial delivery could be cognizable under [Communication Act Section] 628(b) as an unfair method of competition or deceptive practice if it precluded competitive MVPDs from providing satellite cable programming.”); *RCN Telecom Services*, FCC 01-127, at ¶ 15.

²⁷ *RCN Telecom Services*, FCC 01-127 (Dissenting Statement of Commissioner Gloria Tristani) (“refusal to permit fuller discovery denied due process and improperly foreclosed RCN from carrying its burden of proof.”).

lack of vigilant action may have helped bring about the precise result that the Commission feared when it stated:

We recognize that the terrestrial distribution of programming, including in particular regional sports programming, could eventually have a substantial impact on the ability of alternative MVPDs to compete in the video marketplace. We will continue to monitor this issue and its impact on the competitive marketplace.²⁸

Notably, while the enforcement of the existing program access rules has been lax, the European Union (“EU”) offers a study in contrast. The EU has been proactive in scrutinizing similar conduct involving some of the same players, without even having the benefit of specific rules such as those promulgated under 47 U.S.C. § 548. Indeed, that scrutiny apparently extends to relationships with unaffiliated programmers. The EU has reportedly launched two separate investigations of potentially discriminatory programming deals: one involving possibly exclusive deals made by News Corp. venture British Sky Broadcasting with Disney and Discovery, and a second investigation of the Union of European Football Associations for its system of offering exclusive broadcasting rights to Champions League matches.²⁹ The United States market is clearly not immune to similar anti-competitive conduct. *See* 2000 Report at ¶ 184 (observing that programming giants News Corp. and Disney own interests in sports programmers, sports venues and teams, “making them vertically integrated at all levels of the sports industry”).

In sum, the lack of access to vertically integrated programming, and the unjustified preferential access to network programming, are still problems today, as they were in

²⁸ 2000 Report at 10.

²⁹ Andy Stern, “BSkyB’s Discovery, Disney Deal Probed,” *Variety*, July 30-August 5, 2001, at 15.

1992 and 1999 respectively, when Congress identified them and took steps to combat them. And the conduct of vertically integrated cable programmers may have been exacerbated by the lack of vigilant policing.

The Commission has the statutory tools to combat these problems, and should utilize such authority in three ways. *First*, it should leave no room for doubt that it is willing to enforce vigorously the existing program access and retransmission consent laws. *Second*, it should promptly commence the proceeding required by Congress to determine that the ban on exclusivity “continues to be necessary to preserve and protect competition and diversity in the distribution of video programming.” 47 U.S.C. § 548 (c)(5). In EchoStar’s view, the consequences of allowing the exclusivity rule to sunset would be dire for competition and diversity.

Finally, the Commission should increase its focus on vertical integration in evaluating proposed transactions in the MVPD area. Scrutiny of the vertical aspects of these transactions is especially necessary in light of recent, well-publicized merger discussions or proposals that may be expected to result in further concentration of content ownership in the hands of a few very large distributors. Just recently, the news media have reported merger discussions between AT&T and AOL/Time Warner, noting that the massive merged entity would own Warner Bros. Film studio and Home Box Office.³⁰ Merger discussions have also been reported between AT&T and Disney, owner of ABC and ESPN, the nation’s largest sports programming network.³¹ This wave of discussions was in turn precipitated by Comcast’s bid for

³⁰ Deborah Solomon, Nikhil Deogun & Martin Peers, “AT&T and AOL Discuss a Cable Merger,” *Wall Street Journal*, July 25, 2001, at A3.

³¹ *Id.*

AT&T, which if successful, could result in control of Comcast's SportsNet by an even larger cable colossus, and a possible expansion of Comcast's unfortunate tactics in the program access area. The looming further increases in media concentration should be at or near the top of the Commission's concerns in evaluating such deals.

III. RECENT COMMISSION ACTIONS MAY HAMPER COMPETITION

The Commission sought comment in the NOI regarding its consideration of a "terrestrial radio service that would share the DBS spectrum and provide additional video competition."³² EchoStar does not take issue with the Commission's efforts to spur competition in the market for video programming distribution. Such efforts, however, should be informed by the Hippocratic principle: first, do no harm. It would be ironic if the Commission undermined the only proven alternative to cable in the name of promoting competition to cable. Licensing a terrestrial point to multipoint service in the same spectrum used by DBS would be harmful to DBS without being necessary, since terrestrial services of this kind can be accommodated in other frequencies. After conducting the tests required by Congress, the MITRE Corporation has already concluded that such a service "poses a significant interference threat to DBS operation in

³² Notice at ¶ 26 (citing *Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-band Frequency Range; Amendment of the Commission's Rules to Authorize Subsidiary Terrestrial Use of the 12.2-12.7 GHz Band by Direct Broadcast Satellite Licensees and Their Affiliates; and Applications of Broadwave USA, PDC Broadband Corporation and Satellite Receivers, Ltd. to Provide a Fixed Service in the 12.2-12.7 GHz Band*, ET Docket No. 98-206, 16 FCC Rcd. 4096 (2001)).

many realistic operational situations,” and has left open the question of whether the cost of any mitigation measures outweigh their benefits.³³

Greater reliability and superior picture and sound quality are among the primary reasons that consumers choose DBS. If the spectrum used by DBS were to be invaded by a terrestrial “wireless cable” service, consumers who rely on DBS would experience increased interference in form of longer and more frequent service outages. Decreased reliability would adversely affect DBS subscribership, undermining the efforts that both Congress and the Commission have undertaken to foster competition with cable.

³³ See “MITRE Technical Report: Analysis of Potential MVDDS Interference to DBS in the 12.2-12.7 GHz Band,” MITRE Corporation, April 2001, at xvi and 6-1. MITRE Corporation was tasked by the Commission to perform the congressionally mandated independent tests of the proposed technology to determine whether such systems would cause interference to incumbent DBS systems, pursuant to “Prevention of Interference to Direct Broadcast Satellite Services,” Section 1012(b), Pub. L. No. 106-553, 114 Stat. 2762, 2762A-344 (2000).

IV. CONCLUSION

EchoStar urges the Commission to take the foregoing comments into account in its next annual report and focus its attention on the all-important question of program access.

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